

REMARKS/ARGUMENTS

In response to the Office Action mailed December 20, 2004, Applicants respectfully request reconsideration of the application, in light of the following remarks.

Applicants wish to thank Examiner Horton for the helpful and courteous discussions she had with Applicants' U.S. representative on January 11, 2005. At that time, Applicants' U.S. representative reiterated the arguments made in the response filed August 9, 2004 to the May 7, 2004 Office Action. The following is intended to expand upon that discussion.

The Office has maintained the rejection of Claims 1, 2, 4, 5, 7, 15-19 and 31 under 35 U.S.C. § 102(b) and Claims 12 and 14 under 35 U.S.C. § 103(a) over Elmer (U.S. 6,442,911).

Applicants respectfully traverse the rejections because Elmer is not prior art under 35 U.S.C. § 102(b) or 35 U.S.C. § 102(e).

The present application is a continuation of a PCT application filed on August 4, 2000. The Applicants have claimed the benefit of this filing date under 35 U.S.C. § 120 and therefore this is the effective U.S. filing date (35 U.S.C. § 363).

Elmer issued on September 3, 2002 from a continuation of a PCT application filed on January 3, 2000. As discussed in the Request for Reconsideration filed on August 9, 2004, the earliest publication date for Elmer is October 12, 2000 (PCT Application Publication). This date is after the present application's filing date of August 4, 2000. Therefore, Elmer cannot qualify as prior art under 35 U.S.C. § 102(b).

Applicants also note that the PCT file date for Elmer is January 3, 2000 and its PCT Publication date is October 12, 2000 both of which are prior to November 29, 2000 (effective date of the American Inventors Protection Act). Because both of these dates are before November 29, 2000, the 35 U.S.C. §§ 102(e)(1) and 102(e)(2) dates for Elmer are its U.S. filing date which is December 5, 2000.

The Examiner is invited to review Example 9 given in M.P.E.P. § 706.02(f)(1) which illustrates the § 102(e) prior art analysis for Elmer. As the Examiner will note, the § 102(e)(1) date for the publication and the § 102(e)(2) date for the patent are both December 5, 2000, the U.S. file date for Elmer. In addition there is no § 102(e)(1) date for the PCT publication.

Because the present application's effective U.S. file date of August 4, 2000 is before the §102(e) date of December 5, 2000, Elmer does not qualify as prior art under 35 U.S.C. § 102(e). Therefore, it is not necessary for the Applicants to perfect priority of their German priority application, and accordingly, Applicants respectfully request that the Examiner withdraw the rejection.

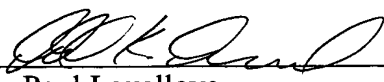
In light of the above remarks contained herein, Applicants respectfully submit that the present application is now in condition for allowance. Favorable reconsideration is respectfully requested.

Respectfully submitted,

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